

EXHIBIT 16

**In The
United States District Court
District of Delaware**

IN RE: MARVEL ENTERTAINMENT GROUP, INC., et al.,

Debtors,

-VS-

MARVIN WOLFMAN,

CASE NO. 97-638 (RRM)

**DEPOSITION
OF
ROY THOMAS
October 13, 1999**



**TRAVELING
TRANSCRIPT™**

A W R

PROFESSIONALS SERVING PROFESSIONALS

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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF DELAWARE
3
4 IN RE: MARVEL ENTERTAINMENT GROUP, INC., ET AL.,
5 Debtors,
6 CASE NO. 97-638 (RRM)
7 vs.
8 MARVIN WOLFMAN
9
10 PARTIAL TELEPHONE
11 DEPOSITION OF: ROY THOMAS
12
13 DATE: October 13, 1999
14
15 TIME: 6:30 PM
16
17 LOCATION: Fairfield Inn
663 Citadel Road
Orangeburg, SC
18
19 TAKEN BY: Counsel for the Debtors
20
21 REPORTED BY: LESLIE TOOLE STANLEY,
Certified Shorthand Reporter
22
23 A. WILLIAM ROBERTS, JR., & ASSOCIATES
24 Charleston, SC Columbia, SC
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25 Greenville, SC Charlotte, NC
(864) 234-7030 (704) 573-3919

1 STIPULATION

2 It is stipulated by and among Counsel that
3 this deposition is being taken in accordance with the
4 Federal Rules of Civil Procedure, that all objections
5 as to Notice of this deposition are hereby waived; that
6 all objections except as to form are reserved until the
7 time of trial; and that the deponent does not waive
8 reading and signing of this deposition.

9 * * * * *

10 ROY THOMAS,

11 being first duly sworn, testified as follows:

12 EXAMINATION

13 BY MS. KLEINICK:

14 Q. Can you please state your full name and
15 address for the record, please?

16 A. Roy William Thomas, Junior. My address is
17 Route 3, Box 468, St. Matthews, South Carolina 29135.

18 Q. Mr. Thomas, I'm going to show you a
19 document. I'd like to have this marked as Thomas
20 Exhibit 1 for identification. And I'll ask you if you
21 recognize it.

22 MS. KLEINICK: This is a subpoena, Michael.

23 MR. DILIBERTO: Okay.

24 THE WITNESS: Okay --

25 (THOMAS EXH. 1, U. S. District Court

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE DEBTORS/PLAINTIFF
MARVEL ENTERTAINMENT GROUP:

3 BATTLE, FOWLER
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6 ATTORNEYS FOR MARVIN WOLFMAN:

7 KLEINBERG & LERNER
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(310) 557-1511
11 (Appearing via telephone)

20 (INDEX AT REAR OF TRANSCRIPT)

1 Subpoena, was marked for identification.)

2 BY MS. KLEINICK:

3 Q. Okay --

4 A. Because I didn't pay much attention to it --
5 it looks like the subpoena.

6 Q. Are you testifying here pursuant to a
7 subpoena?

8 A. Yes.

9 Q. Mr. Thomas, describe your educational
10 background.

11 A. Regular school, high school, went to college
12 at Southeast Missouri State College, now University, in
13 Cape Gerardo, Missouri. Graduated there in 1961.

14 Q. What was your degree in?

15 A. BS, Bachelor of Science, in Education.

16 (Off-the-record conference.)

17 BY MS. KLEINICK:

18 Q. When you graduated from college, what did you
19 do for employment?

20 A. I taught high school English for four years
21 in a couple of high schools in Missouri.

22 Q. So that would be until 1965, approximately?

23 A. 1965, yes.

24 Q. And what did you do -- what subjects did you
25 teach while you were teaching between '61 and '65?

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1 from what you thought Marv should publish --
 2 A. Yes.
 3 MR. DILIBERTO: Objection, irrelevant.
 4 BY MS. KLEINICK:
 5 Q. If Wolfman had submitted a script that Marvel
 6 believed was unacceptable for some reason, was Marvel
 7 required to obtain Wolfman's approval before changing
 8 that script?
 9 MR. DILIBERTO: Objection, calls for
 10 conclusion, incomplete, hypothetical.
 11 THE WITNESS: No.
 12 BY MS. KLEINICK:
 13 Q. If Wolfman and Marvel had a disagreement with
 14 respect to either the direction a series should take or
 15 the contents of any particular issue, who was the
 16 one -- who would have the final authority to determine
 17 what got published?
 18 A. The final authority was Stan. Since Stan
 19 would not involve himself in the day-to-day work,
 20 unless there was something he personally saw or
 21 something he took an interest in, that was my
 22 responsibility.
 23 Q. Was that true with respect to all of the
 24 freelance writers at Marvel?
 25 A. Well --

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1 MR. DILIBERTO: Objection, no foundation.
 2 THE WITNESS: Yes, it was.
 3 BY MS. KLEINICK:
 4 Q. Did Marvel have any practice with respect to
 5 who had the right to make final determinations as to
 6 what got published, the freelance writer or the
 7 company?
 8 A. There wasn't any doubt that Stan or I could
 9 make any change that we needed to have in a story or
 10 anything else, subject only to the fact that we had to
 11 have the book out of there on some kind of schedule.
 12 But Stan or I could do that. No one else had the
 13 authority to make changes without checking with me.
 14 The Assistant Editors did not. They might sometimes
 15 could take that authority, but they didn't really have
 16 it, unless it was a typo or an obvious word thing or
 17 something.
 18 Q. If Marvel disagreed with language contained
 19 in the script submitted by a freelance artist, and that
 20 freelance -- the freelance writer, and that writer
 21 refused to revise the script, what recourse, if any,
 22 did Marvel have?
 23 MR. DILIBERTO: Irrelevant.
 24 THE WITNESS: We would have changed the
 25 script. I would say if a writer really objected

1 strongly to some change, and you have a lot of respect
 2 for the writer, then you are a fool if you don't at
 3 least try to find out why the writer objects to having
 4 that changed. You may have a reason you haven't
 5 thought of. Nobody is perfect. In the end, it was my
 6 responsibility and my authority to make any change I
 7 felt like I needed to make.
 8 BY MS. KLEINICK:
 9 Q. As part of your responsibilities as an editor
 10 of a series or in your capacity as Editor-in-Chief, did
 11 you have the authority to supervise the freelance
 12 writers with respect to any characters that they wanted
 13 to introduce into the scripts they submitted to
 14 Marvel?
 15 (Off-the-record conference.)
 16 MR. DILIBERTO: Could you repeat the
 17 question?
 18 (Question read back.)
 19 BY MS. KLEINICK:
 20 Q. As part of your responsibility as an Editor
 21 of a series or in your capacity as Editor-in-Chief of
 22 Marvel, did you have the right to direct or supervise a
 23 freelance writer with respect to any new characters
 24 that they wanted to introduce into the scripts they
 25 were writing for Marvel?

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1 MR. DILIBERTO: Objection, irrelevant.
 2 THE WITNESS: Yes, I did have that authority
 3 if I wanted to exercise it.
 4 BY MS. KLEINICK:
 5 Q. Did that authority include the right to
 6 changes in features or back story of any new character
 7 that a writer wanted to introduce into a Marvel
 8 series?
 9 MR. DILIBERTO: Objection, irrelevant.
 10 THE WITNESS: Yes, it did.
 11 BY MS. KLEINICK:
 12 Q. Did that authority also include to write, to
 13 supervise and direct how that writer would use the
 14 characters in a script?
 15 MR. DILIBERTO: Same objection.
 16 THE WITNESS: If I wanted to yes, I had that
 17 right, that authority.
 18 BY MS. KLEINICK:
 19 Q. If a writer had wanted to make a change to a
 20 character that Marvel did not agree with, who would
 21 have the final say in how that character would be
 22 depicted in the issue?
 23 MR. DILIBERTO: Objection, incomplete,
 24 hypothetical.
 25 THE WITNESS: Well, Marvel would have that

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1 right, which meant Stan or me that particular time.
 2 BY MS. KLEINICK:
 3 Q. Would that be true even for characters that
 4 the writer himself or herself had created?
 5 A. Well --
 6 MR. DILIBERTO: Objection, vague and
 7 irrelevant.
 8 THE WITNESS: As far as I was concerned, and
 9 I'm sure as far as Stan was concerned, yes, we had that
 10 authority. We didn't exercise it particularly, but --
 11 but we had it, we felt.
 12 BY MS. KLEINICK:
 13 Q. Did you ever have occasion to exercise it?
 14 A. Yes.
 15 Q. Okay --
 16 MR. DILIBERTO: Objection, vague.
 17 BY MS. KLEINICK:
 18 Q. Did you and Marv Wolfman ever come to any
 19 agreement where Wolfman would have complete control
 20 over either the story lines or the characters he
 21 created for the Tomb of Dracula series?
 22 MR. DILIBERTO: Objection, no foundation.
 23 THE WITNESS: I don't remember any specific
 24 discussion in that regard. He had authority to do
 25 whatever he wanted to do as the writer as long as Stan

1 long as it was subject to me and Stan. He was the next
 2 in line, serving as an unpaid editor.
 3 BY MS. KLEINICK:
 4 Q. Okay.
 5 A. Whether we used those terms or not, we joked
 6 about it from time to time.
 7 Q. Did Marv Wolfman have any agreement with
 8 Marvel that prohibited Marvel from allowing other
 9 writers from using characters that he introduced into
 10 the Tomb of Dracula series in other Marvel
 11 publications?
 12 MR. DILIBERTO: Objection; vague as to
 13 agreement and no foundation.
 14 THE WITNESS: Not that I'm aware of.
 15 BY MS. KLEINICK:
 16 Q. Did you ever have any discussion with Marv
 17 Wolfman where he demanded and you agreed to allow him
 18 to prevent any other writers from using characters that
 19 he introduced into Marvel story lines in other
 20 publications?
 21 MR. DILIBERTO: Objection, irrelevant.
 22 THE WITNESS: I don't recall any such
 23 conversation; however, in many cases, there might be
 24 characters that were so ingrained in a particular
 25 series that a writer might, for at least a certain

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1 or I didn't object, as far as I was concerned, and I
 2 felt he understood that, but other than that, I don't
 3 know. I don't remember any specific conversations
 4 about it, really.
 5 BY MS. KLEINICK:
 6 Q. Did you reach -- did you ever reach an
 7 agreement with any freelance writer where -- where you
 8 would give complete control over a story line or
 9 character to that writer?
 10 A. Well --
 11 MR. DILIBERTO: Objection; vague and no
 12 foundation.
 13 BY MS. KLEINICK:
 14 Q. Okay --
 15 A. You mean during this period when I was
 16 Editor-in-Chief?
 17 Q. Yes.
 18 A. No.
 19 Q. Do you recall ever reaching any agreement
 20 with Marv Wolfman where he would have complete control
 21 over either the stories or the characters or -- that he
 22 was introducing or the stories for any other series he
 23 wrote for Marvel?
 24 MR. DILIBERTO: Objection, irrelevant.
 25 THE WITNESS: He had the complete control as

1 indefinite period of time, might not want that
 2 character used in another book.
 3 And I would listen to those arguments and
 4 maybe have gone along with it, if there was a good
 5 reason. I don't recall whether we did or not. We
 6 didn't want this character used in another book right
 7 then because it would mess things up and so forth. But
 8 whether I had such a conversation with Mary or not, I
 9 don't recall.
 10 BY MS. KLEINICK:
 11 Q. Did you ever reach an agreement with any
 12 freelance writer where that freelance writer could
 13 forever prevent Marvel from allowing another writer to
 14 use the characters they introduce into the story
 15 lines?
 16 MR. DILIBERTO: Objection; irrelevant and no
 17 foundation.
 18 THE WITNESS: We never talked in terms of
 19 forever. We were always thinking of the next issue or
 20 two, was the furthest ahead we ever thought. I don't
 21 know how to answer a question that deals with forever
 22 exactly, except to say if it was forever, the answer
 23 had to be no. We just didn't think in terms of
 24 guaranteeing anything that far ahead. But maybe I
 25 didn't understand the question properly.

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1 You said Pacific Comics?

2 A. Yes.

3 Q. What were the years of that?

4 A. That started about -- that would have been
5 about '86, '87, somewhere around in there. I might
6 have been doing a little for them while I still worked
7 at Marvel, or D. C. -- Might have been doing comics for
8 them a little earlier. It didn't seem to compete.

9 Q. Then you mentioned -- there was First Comics?

10 A. Yes, that started about 1986, and I did four
11 issues of a character called Alter Ego named after my
12 fans -- for them.

13 Q. Next there was Dark Horse?

14 A. Dark Horse was in the early '90s. I had the
15 license to do some Robert E. Howard characters. There
16 were about seven or eight comics.

17 Q. And there was one after that I didn't get --

18 A. Cross Plains is the company I'm working for
19 now with Robert E. Howard characters.

20 Q. That was in the 1990s?

21 A. Yes, just a year or so. There are only a few
22 issues out --

23 Q. There was something like Feed Comics or --

24 A. There was Dude Comics in Spain that I'm doing
25 a little work for now. Could it be Dude Comics?

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1 Q. Dude Comics is also in the 1990s?

2 A. Yes, that is a Spanish company. It's not
3 printed in English, only Spanish. There was a little
4 company called Blue Comet that I did one or two comics
5 for.

6 Q. When was that?

7 A. '86, '87. I forgot, because my wife did most
8 of that. But both of our names are on it.

9 Q. Are there any names we left out in the comic
10 book field?

11 A. Let's see. I'm trying to think. I don't
12 think I ever did anything for Eclipse. I don't think I
13 ever did that. So I can't -- I can't think of any
14 others. I just can't recall.

15 Q. Apart from Marvel Comics --

16 A. I'm sorry, I mentioned Heroic before, Heroic
17 Publishing, which Stan and I made up a character or
18 two.

19 Q. That was when?

20 A. That was also '86 and '87. This was after
21 any exclusive contract ran out. I kept working for
22 D. C., but also started working for other companies.

23 Q. When was your time period at D. C. Comics?

24 A. Under the contract -- six years. It was a
25 six-year period there. Two- or three-year contracts, I

1 believe.

2 Q. You also mentioned Planeta?

3 A. That's something that now, in the last couple
4 of years -- I just do articles for them about my Conan
5 comics. They pay me for one or two a month.

6 Q. You were at Marvel from 1965 to 1974; is that
7 correct?

8 A. I was with Marvel from 1965 until the end of
9 1980, exclusively. I'm not sure the date the contract
10 ran out -- it was no earlier than '80. From '74 until
11 '80, I was under two writer/editor contracts.

12 Q. Okay.

13 A. And then two writer contracts, one was sort
14 of writer/editor.

15 Q. Why were there two contracts at Marvel? Were
16 they different terms?

17 A. They were three-year terms. Just renewed
18 without much change, I think.

19 Q. The first contract, I think was when --

20 A. '74 until -- after I stepped down. Stan
21 suggested that so I wouldn't go to D. C.

22 Q. Okay.

23 A. He knew that I had some characters I wanted
24 to write.

25 Q. So you never worked for Ward Publications?

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1 A. No.

2 Q. I'm sorry?

3 A. No.

4 Q. You never worked at Skyworld Publications?

5 A. No, I suggested one or two ideas to Saul
6 Broadski, who was the Editor -- when he became Editor
7 and a partner there. I suggested one or two comic
8 ideas he did, but it was just informal. I was working
9 for Marvel. I wanted to help Saul, because he was a
10 friend. But I never worked for them or got a dime from
11 them.

12 Q. Are you aware of any creators at D. C. making
13 arrangements that might be different from other
14 creators at D. C.?

15 MS. KLEINICK: Objection.

16 THE WITNESS: It was sort of a vague general
17 knowledge that Bob Kane had some special deal on
18 Batman, but I didn't have any particulars about it. It
19 was sort of like things you heard, but I didn't have
20 any special knowledge of it.

21 BY MR. DILIBERTO:

22 Q. When Jodi showed you the declaration, which
23 has been marked as exhibit 3 -- if you could put that
24 before you, please.

25 A. Which declaration?

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1 your time. I have no further questions.
 2 MS. KLEINICK: We've agreed that we are going
 3 to dispense with the requirement that Mr. Thomas sign
 4 the transcript of the deposition before a notary and
 5 only send a copy of the transcript to Mr. Thomas, and
 6 he is going to sign it and send it back. We're off,
 7 thank you.

8 (THOMAS EXH. 5, Declaration of Roy Thomas,
 9 Jr., submitted by Mr. Diliberto, was marked for
 10 identification.)

11 (The deposition was concluded at 10:15 p.m.)
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SIGNATURE OF DEPONENT

1
 2
 3 I, the undersigned, ROY THOMAS, do hereby
 4 certify that I have read the foregoing deposition and
 5 find it to be a true and accurate transcription of my
 6 testimony, with the following corrections, if any:
 7

8 PAGE LINE CHANGE REASON
 9
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 25

 ROY THOMAS Date

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CERTIFICATE OF REPORTER

1
 2
 3
 4 I, Leslie Toole Stanley, Certified Shorthand
 5 Reporter and Notary Public for the State of South
 6 Carolina at Large, do hereby certify:
 7 That the foregoing deposition was taken before me
 8 on the date and at the time and location stated on page
 9 1 of this transcript; that the witness was duly sworn
 10 to testify to the truth, the whole truth, and nothing
 11 but the truth; that the testimony of the witness and
 12 all objections made at the time of the examination were
 13 recorded stenographically by me and were thereafter
 14 transcribed by computer-aided transcription; that the
 15 foregoing deposition as typed is a true, accurate, and
 16 complete record of the testimony of the witness and of
 17 all objections made at the time of the examination.
 18 I further certify that I am neither related to nor
 19 counsel for any party to the cause pending or
 20 interested in the events thereof.
 21
 22
 23
 24
 25

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1 Witness my hand, I have hereunto affixed my
 2 official seal this 18th day of October, 1999, at
 3 Columbia, Richland County, South Carolina.
 4
 5
 6

 Leslie Toole Stanley
 Certified Shorthand Reporter
 Notary Public
 My Commission expires
 February 12, 2001

THOMAS, ROY**Condenselt™****IN RE: MARVEL ENTERTAINMENT**

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REQUESTED INFORMATION INDEX**(No Information Requested)****E X H I B I T S**

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